

Fair Political Practices Commission
MEMORANDUM

To: Chairman Randolph and Commissioners Blair, Downey, Huguenin, and Remy

From: Galena West, Commission Counsel, Legal Division
Carla Wardlow, Chief, Technical Assistance Division
Luisa Menchaca, General Counsel

Date: May 31, 2005

Subject: Adoption of Amendments to Regulation 18452 (CalPERS Reporting Regulation) and Amendments to the Form 900 (Public Employees' Retirement Board - Candidate Campaign Statement)

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I. Executive Summary

This memorandum discusses runoff elections conducted by the Board of Administration of the Public Employees' Retirement System ("board" or "CalPERS"). The board consists of 13 members (20 with alternates), six of whom are elected, the balance being appointed positions. The six elected members are not selected in elections voted upon by the general electorate but are voted upon solely by a particular constituent group through a system of balloting by mail, which extends over a specific period of time. Section 84225 of the Political Reform Act (the "Act")¹ requires candidates for the six elected board seats to file campaign statements containing the information required under section 84211, but only to the extent the information is applicable to a board election. This caveat limits the reporting required by CalPERS candidates to only two reports per election year, as outlined in regulation 18452.

CalPERS's regulation 554.6 has been amended to create another type of CalPERS election – the runoff – instituted when a majority has not been achieved through the first round of balloting. Because of this change, regulation 18452 (Appendix 1) also needs modification to require a third report so that CalPERS candidates separately disclose contributions and expenditures in connection with the runoff election. Otherwise, this information would not be available to the voters until January of the following calendar year. This change is also reflected in the amendments to the candidate campaign statement currently required to be filed by CalPERS candidates (the "Form 900" attached as Appendix 2).

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

II. Background

Regulations 18451 and 18452 were originally adopted with several other regulations, to implement the provisions of Government Code section 84225,² which was added to the Act in 1998. Section 84225 requires campaign reporting for certain elections conducted by CalPERS. The CalPERS board consists of 13 members (20 with alternates), six of whom are elected, the balance being appointed positions. The six elected members are not selected in elections voted upon by the general electorate. They are voted upon solely by a particular constituent group under elections supervised by CalPERS. (Section 20090.)³ These elections are scheduled over a four-year period, in scattered terms.

Section 84225 requires candidates for the six elected board seats, including incumbent board members running for reelection, to file campaign statements containing the information required under section 84211 (which lists requirements for all other campaign statements), but only to the extent the information is applicable to a board election. Section 84225 dictates the time frame within which the first and final campaign statements must be filed.⁴ Regulation 18452, adopted to implement section 84225, provides the schedule for the filing of the campaign statements, and sets forth the required content of the statements.

In November 2000, CalPERS, by regulation, instituted runoff elections. The regulation altered CalPERS's election schedule to include runoff elections in the event that no single candidate obtained a majority of the votes cast (majority being defined as 50% plus one). Emergency regulation 554.6 became effective on January 16, 2002. At the June 7, 2002, Commission meeting, regulations 18451⁵ and 18452 and changes to the Form 900 were presented for pre-notice discussion. The amendments and Form 900 changes were approved by the Commission without modification to advance to an adoption meeting, and were originally calendared for adoption in August of 2002.

² All statutory references are to the Government Code, unless otherwise specified.

³ The board consists of: 1) one member of the State Personnel Board; 2) the Director of the Department of Personnel Administration; 3) the State Controller; 4) the State Treasurer; 5) an official of a life insurer and an elected official of a contracting agency, appointed by the Governor; 6) a public member appointed by the Speaker of the Assembly and the Senate Committee on Rules; and 7) six members elected under the supervision of the board. This last category includes: 1) two members elected by and from the members of the PERS system ("system") membership; 2) a member elected by the active state members of the system from the state membership; 3) a member elected by and from the active local members of the system who are employees of a school district or a county superintendent of schools; 4) a member elected by and from the active local members of the system other than those who are employees of a school district or a county superintendent of schools; and 5) a member elected by and from the retired members of the system. (Section 20090.)

⁴ Government Code section 20096.5 was passed into law at the same time as section 84225 and is a similar section although outside the parameters of the Act.

⁵ The proposed amendments to regulation 18451 were adopted as part of the technical clean-up packet at the August 2002 Commission meeting; therefore, only regulation 18452 needs amendment at this time. The amendments to regulation 18451 were non-substantive additions to subdivisions (b) and (c), (e) and (f) and were for clarification purposes only.

Subsequent to that meeting, regulation 554.6 was the subject of a complaint for declaratory and injunctive relief, and writ of mandate. On June 14, 2002, the Sacramento Superior Court ruled, among other things, that the CalPERS regulation establishing the runoff elections was invalid, thus nullifying the regulation that the proposed amendments to regulation 18452 were intended to accommodate. The CalPERS Board elected to delay a decision as to whether or not to appeal the court's ruling until at least August of that year.

CalPERS staff notified Commission staff in January of this year that CalPERS had redrafted regulation 554.6, in compliance with the court order, and that the runoff regulation was now in effect. They also informed the Commission that the new provisions for runoffs could be used in this year's election cycle which starts in August. Since current regulation 18452 makes no provision for filing campaign statements pursuant to section 84225 in connection with a runoff, staff is proposing amendments to the regulation and Form 900 to capture fundraising activity and expenditures in connection with those elections.

III. Proposed Amendments to Regulation 18452

A. Framework

The timing framework within which the campaign statements must be filed is dictated by section 84225. This section provides that statements must be filed no later than two days before the beginning of the mail-in ballot period for the period ending five days before the beginning of the ballot period and no later than January 10 of the next year for the period ending December 31. (Section 84225, subdivision (c).)

Under the current version of regulation 18452, two campaign statements are required to be filed by candidates for the CalPERS board which, combined, cover the entire calendar year for which the election is conducted. Under the current regulation, these campaign statements are called the "first" and "second" statements. The amendments to subdivisions (b)(1) and (b)(2) amend these terms to a "pre-election" and "post-election" statement. In addition, subdivision (b)(2), which addresses special election procedures, is renumbered as (b)(3), to accommodate the insertion of a provision dealing with a runoff election.

The most substantial amendments to the regulation are the insertion of a new subdivision (b)(2) and the addition of subdivision (b)(4), which provide for the filing of one additional campaign statement in the event of runoffs in regular and special elections. If a runoff is held, then the pre-runoff election statement is required no later than two days before the first day of the runoff ballot period. The statement covers the period beginning the day after the closing date of the pre-election statement and ending five days before the beginning of the runoff ballot period. The post-election statement is still filed no later than January 10 of the calendar year following the election year, but would only cover the period beginning the day after the closing date of the pre-runoff election

statement and ending December 31 of the election year. (See Appendix 1 – Proposed Regulation 18452, subdivision (b)(2).)

Subdivision (b)(4) provides the same filing deadlines stated above for a runoff election held after a special election. Again, each candidate files a pre-runoff election statement no later than two days before the first day of the runoff ballot period covering the period beginning the day after the closing date of the pre-election statement and ending five days before the beginning of the runoff ballot period. The only difference is that the post-election statement is filed no later than 40 days following certification of the election to cover the period beginning the day after the closing date of the pre-runoff election statement and ending 30 days after certification of the election. (See Appendix 1 – Proposed Regulation 18452, subdivision (b)(4).)

B. Deadlines

The deadlines for filing the campaign statements change each year, and are dependent on the ballot schedule set by CalPERS.⁶ For instance, if CalPERS set a ballot period to begin June 15, 2005, then the pre-election statement would be due on June 13, 2005, and would cover the period from January 1 - June 10, 2005. The post-election statement would be due January 10, 2006, and would cover the period from June 11 – December 31, 2005.

If a runoff is necessary because no candidate has achieved a majority of the votes cast during the first round of balloting, CalPERS would also set a ballot period for the runoff. The runoff balloting takes place approximately three months after the first ballot period. For our example above, the runoff ballot period would begin on September 14, 2005, which is about three months from the start of the original ballot period. As a result of this date, the pre-runoff statement would be due September 12, 2005 and would cover June 11 – September 9, 2005. The final statement, the post-election statement, would still be due on the same date (January 10, 2006) but would only cover from September 10 – December 31, 2005 since the pre-runoff statement has now covered the time between the pre-election statement and the post-election statement.⁷ Note that the dates the pre-election statement and the post-election statements were due did not change – it just adds one additional report in between the two and reduces the period of time covered by the post-election statement.

⁶ The Form 900 instructs candidates to contact CalPERS regarding the ballot schedule and specific filing deadlines. However, the due dates for the Form 900 filings are based on the counting methods used in regulation 18116.

⁷ The deadlines for a special election would be similar, but would be based on a schedule that would be determined by CalPERS for that particular special election.

EXAMPLE OF A REGULAR ELECTION WITH RUNOFF

Ballot Period Begins	Filing Deadline	Type of Statement	Period Covered by Statement
June 15, 2005	June 13, 2005	Pre-election	January 1 - June 10, 2005
September 14, 2005 (Runoff Ballot Period Begins)	September 12, 2005	Pre-runoff	June 11 – September 9, 2005
	January 10, 2006	Post-election	September 10 – December 31, 2005

There is also a minor amendment of subdivision (f)(2), in which a reference to subdivision (b)(2) is corrected to reflect the subdivision's new number, (b)(3).

IV. Draft Revisions to Form 900 -- Public Employees Retirement Board Candidate Campaign Statement

Also attached is a copy of the amended version of the CalPERS candidate statement, the Form 900.⁸ (Appendix 2.) The form has been revised to accommodate an additional campaign filing if a runoff election is held. Changes to the form are shaded.

V. Recommendation

Staff recommends that the Commission adopt the amendments to regulation 18452 and the Form 900 in order to include filings for runoff elections. CalPERS Senior Staff Counsel, Marte Castaños, has reviewed the proposed changes to regulation 18452 and the Form 900 and has informed us there are no objections to the changes.

Attachments:

Appendix 1 – Proposed Regulation 18452

Appendix 2 – Amended Form 900

⁸ Consistent with regulation 18313, this form has been circulated for a period of 30 days before adoption.